



**Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of a 1986 Chevrolet Corvette, VIN
1G1YY0781G5123481, purchased by Catherine
Russell.

Case Nos.: 97-H-1021, 97-H-1031

FINAL DECISION

Catherine Russell applied to the Department of Transportation for a title and registration for a 1986 Chevrolet Corvette. By letter dated November 5, 1996, the Department refused to issue a title or registration to her. By letter dated February 21, 1997, Ms. Russell requested a hearing to review the Department's decision. Subsequent to filing a request for hearing, Ms. Russell's insurance company, American Family Mutual Insurance Company paid a claim to her for the value of the vehicle. Ms. Russell assigned all her interest in the vehicle to American Family and American Family now seeks to have the title and registration to the vehicle to it. (Docket No. 97-H-1021)

Allstate Indemnity Company also applied to the Department of Transportation for a title and registration to the 1986 Chevrolet Corvette which is the subject of this hearing. The Department refused to issue a title or registration to Allstate Indemnity Company for the subject vehicle. By letter dated March 24, 1997, Allstate Indemnity Company requested a hearing to review the Department's decision. (Docket No. 97-H-1031)

In response to the requests, a combined hearing was scheduled for July 28, 1997. Prior to the hearing, the parties agreed the matter could be decided based on a stipulation of facts without an evidentiary hearing. Accordingly, the hearing was canceled. The parties submitted a stipulation of facts on August 21, 1997.

In accordance with secs 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

American Family Mutual Insurance Company, by
Attorney Teresa A. Mueller
Bell, Metzner, Gierhart & Moore, S.C.
PO Box 1807
Madison, WI 53701-1807

Allstate Indemnity Company, by
Attorney Shawn Eichorst
Suite 1500
735 North Water Street
Milwaukee, WI 53202

Wisconsin Department of Transportation, by
Attorney Charles M. Kernats
Office of General Counsel
PO Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision in this matter on August 26, 1997. No comments on the proposed decision were received. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

Based on the stipulation filed by the parties, the following facts are found:

1. On May 13, 1996, Catherine Russell contracted to purchase a 1986 Chevrolet Corvette, VIN 1G1YY0781G5123481, from Capitol Corvette. Pursuant to the purchase contract, Ms. Russell paid \$16,000 including tax, license and title fees for the subject vehicle. Catherine Russell took possession of the 1986 Chevrolet Corvette on May 13, 1996.

2. In May, 1996, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling used motor vehicles. Capitol Corvette was a sole proprietorship and held motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).

3. The Division of Motor Vehicles of the Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. DMV also has the authority under chapters 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.

4. The 1986 Chevrolet Corvette purchased by Catherine Russell was owned by Larry Usack. Mr. Usack had entered into a consignment agreement with Capitol Corvette to sell the vehicle. Capitol Corvette failed to pay Mr. Usack the purchase price for this vehicle, in violation of the terms of the consignment agreement.

5. Mr. Usack filed a claim with his insurance company, Allstate Insurance Company, for the value of the vehicle. Allstate Insurance Company paid Mr. Usack on his claim and Mr. Usack assigned his interest in the vehicle to Allstate Insurance Company. Allstate Insurance Company by virtue of its payment to Larry Usack asserts an ownership interest in the subject vehicle.

6. Catherine Russell applied to the DMV for Wisconsin title and registration for the subject vehicle, asserting an ownership interest in the subject vehicle. Because of conflicting ownership claims, the DMV refused to issue a title or registration to Catherine Russell.

7. When Catherine Russell purchased the subject vehicle from Capitol Corvette, she was not aware that it was owned by Larry Usack or that the Corvette was sold on consignment by Capitol Corvette for Mr. Usack. Catherine Russell purchased the Corvette at Capitol Corvette's business premises and she believed that Capitol Corvette owned this vehicle and had the authority to sell it. Capitol Corvette did not inform Ms. Russell that the Corvette was owned by Mr. Usack.

8. Catherine Russell has never worked for an automobile dealer, nor has she worked in the automotive industry. Prior to this transaction, Catherine Russell had not had any financial dealings with Capitol Corvette or David Larson. Catherine Russell had never been on Capitol Corvette's premises prior to this dealing.

9. Catherine Russell purchased the subject motor vehicle in good faith and without knowledge that the sale was in violation of the ownership rights of Larry Usack. Catherine Russell is a buyer in the ordinary course of business of the subject motor vehicle.

10. When the DMV refused to issue a title and registration to her for the subject vehicle, Catherine Russell filed a claim with her insurance company, American Family Mutual Insurance Company, for the value of the vehicle. American Family paid Ms. Russell for her claim and Ms. Russell assigned all her interests in the vehicle to American Family.

Discussion

Catherine Russell has applied to the DMV for a certificate of title and registration for the subject motor vehicle. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to Ms. Russell for the subject motor vehicle.¹

The Wisconsin motor vehicle code is silent with respect to issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial Code. Pursuant to the sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business." In the instant matter, Larry Usack entrusted the subject motor vehicle to Capitol Corvette for the purpose of selling the vehicle. Accordingly, Capitol Corvette had the power to transfer ownership of the vehicle to a buyer.

Capitol Corvette has authority to transfer interest in the vehicle even if the consignor has retained title. In general, the interests of a consignor are not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a

¹ Sec. 342.11(1), Stats., provides in relevant part.

The department shall refuse issuance of a certificate of title...for any of the following reasons.

(1) The department has reasonable grounds to believe that.

- (a) The person alleged to be the owner of the vehicle is not the owner
- (b) The application contains a false or fraudulent statement.

Sec. 342.12(2), Stats., provides in relevant part

(2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub (3), shall either

- (a) Withhold issuance of a certificate of title until the applicant presents documents reasonable sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it, or
- (b) Issue a distinctive certificate of title pursuant to sec. 342.10(4) or 342.283.

potential security interest.² Larry Usack has not alleged that he complied with the provisions of sec. 402.326(3), Stats.

Catherine Russell purchased the vehicle from Capitol Corvette. She was unaware that Capitol Corvette was selling the vehicle on consignment. Even if Ms. Russell had been aware that the vehicle was being sold on consignment, there is no evidence that she should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

Ms. Russell has the burden to prove that she is a buyer in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 402.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . .'. Based on the evidence in the record, it appears that Catherine Russell is a good faith purchaser who purchased the vehicle without knowledge that the sale was in violation of the ownership rights of Larry Usack. Catherine Russell purchased the vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used motor vehicles.

Catherine Russell was entitled to a title and registration to the subject vehicle. She has since assigned her interests in the vehicle to American Family Mutual Insurance Company. Therefore, a title and registration should be issued to American Family Mutual Insurance Company

² Sec 402 326(3), Stats , provides in relevant part.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery.

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others, or

(c) Complies with the filing provisions of ch. 409

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of Larry Usack's ownership rights in the subject motor vehicle to a buyer in the ordinary course of business.
2. Catherine Russell is a buyer in the ordinary course of business of the subject motor vehicle. Pursuant to sec. 402.403, Stats., Catherine Russell has acquired title and ownership of the subject motor vehicle.
3. Catherine Russell has assigned her interests in the vehicle to American Family Mutual Insurance Company. Therefore, a title and registration should be issued to American Family Mutual Insurance Company.
4. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a motor vehicle title and registration to American Family Mutual Insurance Company for the 1986 Chevrolet Corvette, VIN 1G1YY0781G5123481, which is the subject of this matter.

Dated at Madison, Wisconsin on September 22, 1997.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744

By: _____

David H. Schwarz
Administrator